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AUG 06 2010

OFFICE OF PETITIONS

In re Application of :
Ho et al. : DECISION ON
Application No. 10/828,761 : PETITION
Filed: April 20, 2004 :
Atty Docket No. 1176/209 :

This is a decision on the RENEWED PETITION UNDER 37 CFR 1.137(a), filed March 13, 2009, which is being treated as a (no-fee) petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is GRANTED.

The above-identified application became abandoned for failure to timely file an appeal brief and brief fee. By decision mailed January 21, 2009, the initial petition was dismissed. It was concluded that petitioner had shown that an appeal brief was timely filed by facsimile transmission on April 14, 2008. However, it was not shown that the brief was accompanied by the required brief fee set forth in 37 CFR 41.20(b)(2).

On instant renewed petition, it was established that in fact on April 14, 2008 the record contained a general authorization to charge any required fees to a deposit account. There is no showing of record that any attempt was ever made to charge the required brief fee to the deposit account. It is noted that as of the mailing of the decision dismissing the petition mailed January 21, 2009 evidence of the general authorization was of record in this application. Accordingly, in the first instance, in response to the petition filed September 10, 2008, the

holding of abandonment should have been withdrawn.
Consideration of the petition under 37 CFR 1.137(a) was unnecessary.

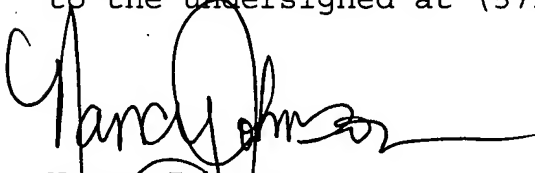
Receipt of the appeal brief fee on renewed petition is acknowledged.

Further, as consideration of the alternative petition under 37 CFR 1.137(a) in the first instance was unnecessary, the fee for consideration under 37 CFR 1.137(a) of \$770¹ is being refunded.

No fee is required on petition under § 1.181.

Technology Center AU 2629 has been advised of this decision. The application is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for consideration by the examiner of the appeal brief resubmitted on September 10, 2008.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ The fee for unintentional revival rather than unavoidable revival was charged.